a5

14. The method claim 9, wherein said animals are selected from a group consisting of deer, elk, moose and caribou.

REMARKS

Claims 1-13 are pending in the present application. By this response, claims 1,2,4,5,9, and 11 are amended. Claims 3,6,7 and 8 are canceled, and new claim 14 is added. All claim amendments are provided to address rejections under §112, and are not meant to decrease the original scope of the invention with respect to the selected animals. Care has been exercised to avoid the introduction of new matter.

Rejection Under 35 U.S.C. §112

The Examiner has rejected claims 1-16 under 35 U.S.C. 112, second paragraph as failing to set forth the subject matter which the Applicant regards as his invention. In particular, the Examiner asserts that the scope of the claims fails to correspond with that described in the application as filed. The Examiner also states that the claimed terminology "comprising" is inappropriate in that the scope of the claims is not limited to urine collected from two animals.

Responsive thereto the claims are amended to utilize transitional language limiting the designated species to deer, elk, moose and caribou. Thereby humans and other animals that are not similar to those tested are excluded from the recited lure. Since deer have been extensively tested, the lure is known to be effective for them. The test results as described in the attached Affidavits under 37 C.F.R. 1.132 are based upon observations of deer. However, it is reasonably expected that similar animals such as elk, moose, and caribou would follow very similar results. Accordingly, it is urged that the claim definition of the designated species complies with the statutory requirements of 35 U.S.C. §112.

Responsive to the Examiner's rejection under §112, the transitional language in the independent claims is changed to "consisting essentially of". This language is meant to limit the subject lure to urine of only two animals of the designated species as indicated in the attached Affidavits under 37 C.F.R. 1.132. The urine of two animals, and only two animals is essential for the benefits of the claimed lure.

In contrast u7sing the urine of only one deer greatly reduces the benefits of the present invention, as does the use of urine from three or more deer. Any deviation from the two animal urine formula results in drastically decreased benefits, as indicated in the attached affidavits under 37 C.F.R. §1.132. While the

inventive formula is not changed by dilution with water or with preservatives, the benefits are substantially reduced by the dilution of the formula. Thus, standard dilution of the two animal urine formula would still infringe the subject claims, while the formula would not perform nearly as well. As a result, any alterations to pure urine taken from only two animals would materially change the characteristics of the invention. This fact has been the focus of the entire application as originally filed.

Based upon the aforementioned comments and amendments, it is urged that the claims now comply with the statutory requirements of 35 U.S.C. §112.

Claim Rejections Under Conventional Art

Claims 1-7 and 10-12 stand rejected under 35 U.S.C. §102(b) as being anticipated by Collora et al. (U.S. Patent No. 5,896,692). The Collora et al. patent discloses a lure which is constituted by urine collected from more than one animal. The Examiner relies upon the abstract and column 2, lines 1-30, as well as the claims.

Claims 1-16 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Collora et al. The Examiner relies upon the abstract, column 2, lines 1-30, as well as the claims of the Collora et al. patent as disclosing the collection of urine

from more than one animal. The Examiner concludes that it would have been obvious to use this technique with caribou or deer.

Claims 1-10 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Christenson, II (U.S. Patent No. 4,944,940). This patent is relied upon as teaching the use of urine for making scents for attracting animals, such as deer. The lure is taken from the urine of only one animal. The Examiner concludes that lures from the urine of a single animal would not differ from lures made from urine of two animals. Thus, the limitation of urine collected from only two animals is not interpreted as a critical limitation.

Claims 1-16 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Bell (U.S. Patent No. 5,672,342). The Bell patent teaches the use of lures made from urine collected from one individual animal using urine-gathering stalls. The Examiner concludes that the difference between urine collected from a single animal as opposed to two animals is not critical in the formulation of the lure.

Claims 1-16 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Christenson,II in view of Collora et al.. The Chrisenson, II patent is relied upon as teaching the use of urine from one animal for constituting a lure. The Collora et al. patent is relied upon as teaching a method of collecting urine for constituting an animal scent attractant. The Examiner concludes that it would

have been obvious to use the techniques of Collora et al. to collect the single animal urine of Christenson, II.

ARGUMENTS

The aforementioned rejections based upon the conventional art are respectfully traversed. Specifically, no individual reference or combination of teachings of those references suggests the use of a lure based upon urine collected from two animals.

The Collora et al. patent suggests more than one animal but does not specify the use of just two. Both the Bell and Christenson, II patents limit the lure to the urine of only one animal. Thus all three patents relied upon by the Examiner teach away from the specific recitation of a lure made from the lure of only two animals of the designated species. None of the documents cited by the Examiner suggests greatly improved effectiveness of the recited formula. These benefits are manifested in that over 90% of the deer tested preferred the inventive two animal urine formula. The other formulations, including those limited to the urine of one animal and those using the urine of three or more animals had minimal impact when compared to the present invention.

The evidence from the tests is incontrovertible. Three different tests were

conducted over a two year period by two separate testing entities. The results were the same in all the tests conducted, a preference for the present inventive lure in excess of 90% of the deer observed. Protocols of the tests (as described in the attached Affidavits) were carried out in accordance with the standards of wildlife management professionals. Every safeguard that could be used was employed to prevent interaction of the various lures or other factors detrimental to accurate, objective testing. The tests indicate beyond any doubt that a lure limited to the urine of only two animals is very significant, providing far greater effectiveness than other lure formulations, an entirely unexpected result. As such, the recited formulation must be considered unobvious.

The teachings of the Collora et al. patent are not suggestive of the benefits of the present invention. Nor is there is a specific teaching of using only urine from two animals as a lure. Rather, at column 2, lines 60-65 the use of a number of additives, such as tarsal secretions, is suggested. The only segregation suggested in the Collora et al. patent is between buck urine and doe urine. Isolation of animals is only suggested with bucks in order to prevent fighting. Also, at column 2 in lines 25-30 of Collora et al. the suggestion is made that urine from one doe be added to that of another doe in heat. This specifically teaches away from the present invention which requires the urine of two animals in heat.

Further, there is no indication in Collora et al. that the urine of one animal in the gathering pen is segregated from that of other animals, or that the urine gathering pens are confined only to specific animals.

In contrast, the present invention relies upon the absolute segregation of animals so that the urine from only two does in heat is used for a specific lure. This segregation of product is crucial, and constitutes the basis for the claim 9 process. Without segregation, there is no guarantee that the lure is made of urine from only two does in estrus. Accordingly, it is urged that no combination of the cited patents suggest the inventive formula and its superior test results.

The dependent claims contain additional limitations, such as the process of allowing the deer to be in sight of each other at the urine collection point (claim 11). Such limitations are not suggested anywhere in the conventional art, either separately or in combination with the limitations of the independent claims. Accordingly, the dependent claims are patentable for reasons in addition to those supporting patentability of the independent claims.

CONCLUSION

Based upon the aforementioned comments and amendments, as well as the newly-submitted affidavits under 37 C.F.R. 1.132, it is respectfully submitted that all claims distinguish over the conventional art of record, and that this application is now in condition for allowance. Favorable reconsideration is respectfully requested.

Should the Examiner have any comments, questions or suggestions, or should issues remain, the Examiner is respectfully requested to call the undersigned for prompt resolution.

Respectfully submitted,
LEV INTELLECTUAL PROPERTY CONSULTING

Robert G. Lev

I HEREBY CERTIFY THAT THIS CORRESPONDENCE IS BEING DEPOSITED WITH THE UNITED STATES POSTAL SERVICE AS EXPRESS MAIL IN AN ENVELOPE ADDRESSED TO: COMMISSIONER OF PATENTS AND TRADEMARKS, WASHINGTON, D.C. 20231, ON 7/11/01
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Date : July 11, 2001

Claims

I claim :

1. An animal lure for a designated species [comprising]: essentially of selected from a group consisting of deer, elk, moose and caribou, said lure [consisting]

a) the urine of only two animals of said designated species.

2. The lure of claim [1] 4 wherein said animals are females in estrus.

4. The lure of claim [3] 1 wherein said urine is taken exclusively from a single stall used only by said two animals.

5. The lure of claim [1] 4 wherein said two animals are males in rut.

9. A method of making a lure for an identified species of animal using a urine-gathering stall, said method [comprising] consisting essentially of the [step] steps of :

a) limiting use of said urine-gathering stall to only two animals;

b) gathering urine from said urine-gathering stall; and,

c) limiting said lure to only urine gathered from said urine-gathering stall.

11. The method of claim 9, wherein ~~before~~ the step of gathering urine, ~~the~~ includes leading a first animal ~~is lead~~ out of the stall immediately after urination while a second animal is lead into the stall so that said animals are within sight of each other.

14. The method of claim 9, wherein said animals are selected from a group consisting of deer, elk, moose and caribou.